IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL No. 1598 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 22/09/2004 in WP No. 23543 OF 2003 on the file of the High Court.)

Between:

Gundepuri Venkataiah, S/o. Latchaiah,
R/o Penpahad Village and Mandal, Nalgonda District.

..... APPELLANT

AND

1. Basanagarra. Venkanna, S/o. Yellaiah,
R/o. Penpahad Village and Mandal, Nalgonda District.
2. The Election Officer, Stage-II, Gram Panchayat Elections-2001 Penpahad,
Nalgonda District, Mr. G. Narasimha Chary.
3. The District Election Authority (District Collector), Suryapet, Nalgonda District.
4. The Deputy District Election Authority(R.D.O) Suryapet, Nalgonda District.
5. The Assistant District Election Authority (M.P.D.O) Penpahad, Nalgonda District.
6. The Additional District Election Authority (M.R.O) Penpahad, Nalgonda District.
7.The State Election Commissioner of A.P. Buddha Bhavan, Tank Bund,
Secunderabad, rep. by its Commissioner

.....RESPONDENTS

Counsel for the Appellant: Mr. J.R.MANOHAR RAO

Counsel for Respondent No.1: Mr.J.Aswin Kumar

Counsel for Respondents 2 to 6: G.P. for Panchayat Raj

Counsel for Respondent No.7: Mr. K.G.K.Prasad.

The Court made the following :

ORAL JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

The order passed by the learned Single Judge on 22.9.2004 dismissing the Writ Petition of the appellant is under challenge in this Appeal.

The appellant had questioned the legality and validity of the order passed by the Election Tribunal-cum-Junior Civil Judge, Suryapet, Nalgonda District, dated: 21.10.2003 in O.P.No. 8 of 2001. The Election Tribunal had set aside the election of the petitioner-appellant herein elected as Sarpanch of Penpahad village of Nalgonda District.

In the elections, appellant secured 679 votes against the Respondent No.1, who secured 678 votes. The first Respondent filed a petition challenging the election on the ground that election was vitiated by grave material irregularities. The Tribunal recorded its finding that the account of votes polled as mentioned in Form-16 is not tallying with the account of votes counted in Form-17, and there was no account of four votes which were misplaced and thus, there were material irregularities, which affect the result of the elected candidate.

The main grievance of the learned counsel for the appellant is that I.A.No. 439 of 2001 was filed before the Tribunal, on which, order dated: 28.9.2001 was passed. RWs 3 and 4 were recalled for marking Form No.16 and given liberty to cross-examine the witnesses on both sides. Fifth respondent was also directed to produce Form No.16. Against the said order, C.R.P.No. 5901 of 2001 was filed in this Court, and, this Court set aside the said order dated: 28.9.2001 as having been passed without hearing the appellant herein with further direction to the Tribunal to pass fresh order after affording opportunity to both sides. Without passing any fresh order,

the Tribunal disposed of the Election Petition by recording a finding of fact as regards the number of votes polled as 1454 and counted as 1450, thereby, holding that the discrepancy of four votes has not been explained, which, according to the learned counsel for the appellant could not have been done without looking into the record.

The Election Tribunal, in its order dated: 31.10.2003, noted this aspect as follows:

> " …. Rule 32(2)(b) casts a duty on the Election Officer to mention the discrepancy, if any, in part-II of Form No.16. Thus, Form No.16 is an important document which has to be looked into by this Tribunal to reach a just conclusion in this Petition. However, thesaid Form No.16 is not before this Tribunal. Though this Tribunal called for the election material in I.A.No.439 of 2001, the Honourable High Court set aside the said order and directed this Tribunal to dispose of the said I.A. afresh. Subsequently, no orders were passed in the said I.A. Be that as it may, this Tribunal cannot touch now the elecltion material produced in court unless there is a specific order passed by this Court."

After having noticed that the Tribunal cannot touch the election material produced in court unless there is specific order passed in that regard, it did not proceed to pass any order in I.A.No. 439 of 2001, which has remained undecided. Had an order been passed in the said I.A., there was no occasion for the Tribunal to make such observation that the election material produced in the court cannot be touched. It was, in fact, a fact to be ascertained by the Tribunal as to how many votes were polled, i.e. whether 1454 or 1450. Even D.S.Sharma, examined as RW4, in his statement had denied the suggestion that totally 1454 votes were polled in the election to the post of Sarpanch or, that, Stage II Officer had shown wrong account. In that view of the matter, the Tribunal ought not to have proceeded further in the matter, except, by first deciding I.A.No. 439 of 2001. This submission on behalf of the appellant was also noted by the learned Single Judge. But, the learned Single Judge instead of dealing with the same proceeded to record a finding on merits and drew an inference that 1454 votes were polled, which approach, in our view, was not correct, inasmuch as it was also incumbent to record a finding in respect of the submission made by the learned counsel for the petitioner. Consequently, we allow

the Appeal, set aside the impugned order passed by the learned Single Judge, and, allow the Writ Petition, thereby setting aside the order of the Tribunal with direction to the Tribunal to decide the Election Petition afresh in accordance with law, and, before deciding the Election Petition to decide the aforementioned I.A. viz. I.A.No. 439 of 2001. No costs.

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DEVINDER GUPTA, C.J.

27.12005.

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M.NARAYANA REDDY, J.

VR.

Note:

Record be returned.

(BO)

To

1. The Election Officer, Stage-II, Gram Panchayat Elections-2001 Penpahad, Nalgonda District, Mr. G. Narasimha Chary.
2. The District Election Authority (District Collector), Suryapet, Nalgonda District.
3. The Deputy District Election Authority(R.D.O) Suryapet, Nalgonda District.

4. The Assistant District Election Authority (M.P.D.O) Penpahad, Nalgonda District.
5. The Additional District Election Authority (M.R.O) Penpahad, Nalgonda District.
6.The Commissioner, State Election Commission, A.P., Buddha Bhavan, Tank Bund, Secunderabad.

7. Two CCs to Government Pleader for Panchayat Raj, High Court Buildings, Hyderabad (OUT).

8. Two CD copies.